

# SENATE RECORD VOTE ANALYSIS

104th Congress  
2nd Session

Vote No. 251

July 30, 1996, 11:21 am  
Page S-9094 Temp. Record

## ENERGY-WATER APPROPRIATIONS/Animas La Plata Water Project

**SUBJECT:** Energy and Water Development Appropriations Bill for fiscal year 1997 . . . S. 1959. Domenici motion to table the Feingold amendment No. 5106.

### ACTION: MOTION TO TABLE AGREED TO, 65-33

**SYNOPSIS:** As reported, S. 1959, the Energy and Water Development Appropriations Bill for fiscal year 1997, will provide \$20.735 billion in new budget authority to the Department of Defense's Civil Corps of Engineers, to the Department of the Interior's Bureau of Reclamation, to the relevant offices within the Department of Energy, and to related independent agencies and commissions.

**The Feingold amendment** would strike the \$10 million in funding for the Animas La Plata water project. That project will manage the water in the San Juan Basin. Water in southwest Colorado and northern New Mexico will be distributed. The United States is obligated by its treaty requirements with the Mountain Ute and Southern Ute Indian tribes to proceed with this project. All options have been exhaustively studied, and the Federal Government has found that all environmental requirements have been met. Environmental groups have brought a number of time-consuming legal challenges.

Debate was limited by unanimous consent. Senator Domenici moved to table the amendment. Generally, those favoring the motion to table favored the amendment; those opposing the motion to table opposed the amendment.

**Those favoring** the motion to table contended:

The Feingold amendment would destroy one of the most exhaustively studied developmental proposals in all history, would violate treaty requirements, and would create enormous legal problems that would run into the tens or hundreds of millions of dollars. Supposedly, the intention of the amendment is to come up with a smaller version of the project, but regardless of the intention of the sponsor of this amendment, the fanatical environmentalists who oppose this project are not willing to accept any development. If we were to start over, the same delaying tactics would start all over. If Senators, in an effort to save money or to please environmental

(See other side)

YEAS (65)			NAYS (33)		NOT VOTING (2)	
Republicans (46 or 88%)	Democrats (19 or 41%)		Republicans (6 or 12%)	Democrats (27 or 59%)	Republicans (1)	Democrats (1)
Abraham	Helms	Akaka	Chafee	Biden	Frahm- <sup>2</sup>	Pell- <sup>2AN</sup>
Ashcroft	Hutchison	Baucus	Cohen	Boxer		
Bennett	Inhofe	Bingaman	Lugar	Bradley		
Bond	Jeffords	Breaux	Roth	Bumpers		
Brown	Kassebaum	Bryan	Santorum	Byrd		
Burns	Kempthorne	Conrad	Snowe	Dodd		
Campbell	Kyl	Daschle		Exon		
Coats	Lott	Dorgan		Feingold		
Cochran	Mack	Feinstein		Ford		
Coverdell	McCain	Graham		Glenn		
Craig	McConnell	Heflin		Harkin		
D'Amato	Murkowski	Inouye		Hollings		
DeWine	Nickles	Johnston		Kerrey		
Domenici	Pressler	Kennedy		Kerry		
Faircloth	Shelby	Mikulski		Kohl		
Frist	Simpson	Pryor		Lautenberg		
Gorton	Smith	Reid		Leahy		
Gramm	Specter	Simon		Levin		
Grams	Stevens	Wellstone		Lieberman		
Grassley	Thomas			Moseley-Braun		
Gregg	Thompson			Moynihan		
Hatch	Thurmond			Murray		
Hatfield	Warner			Nunn		
				Robb		
				Rockefeller		
				Sarbanes		
				Wyden		

#### EXPLANATION OF ABSENCE:

1—Official Business  
2—Necessarily Absent  
3—Illness  
4—Other

#### SYMBOLS:

AY—Announced Yea  
AN—Announced Nay  
PY—Paired Yea  
PN—Paired Nay

fanatics, agree to the Feingold amendment, they will be agreeing to kill this project, not make it smaller.

In 1968 Congressman Aspinall shepherded the authorization for the Animas La Plata Project through Congress. He was a man of great vision who developed water projects that made the desert bloom where only parched land once had been. The Central Arizona Project and the Central Utah Project were authorized at the same time. Only the Animas La Plata Project has yet to be completed. At the time of its authorization Congress appropriated funds for advance studies. From 1974 through 1977, the Southwestern Water Conservation District and the Bureau of Reclamation sponsored a thorough process of public involvement that compared four major alternatives and dozens of sub-alternatives for each of the four major plans. In total, approximately 100 alternatives for the Animas La Plata Project were considered before the final plan was picked. In 1979, the Definite Plan Report was completed, which details the new configuration for the two reservoirs that will be made. Also, the Fish and Wildlife Service issued a nonjeopardy opinion on the Endangered Species Act. In 1986 the Department of the Interior accepted a cost-sharing arrangement under which State and local entities assumed 38 percent of the upfront costs. Also in 1986 the Colorado Ute Indian Water Rights Settlement Act was signed, and it was enacted by Congress in 1988. The Ute Indians had ironclad treaty rights to the water in the San Juan River, and had filed suit against the Federal Government to enforce those rights. The two affected Ute tribes dropped their suit in return for cash payments from the Federal Government and the State of Colorado, and for one-third of the water that would come from the Animas La Plata Project. In 1987 and in 1990, voters in La Plata County and in San Juan County voted overwhelmingly in favor of the Project. In October 1991 a ground breaking ceremony was held in Durango. In 1992, the San Juan River Recovery Implementation Program began with the goal of allowing development to continue while ensuring the recovery of the endangered fish in the river. Also in 1992 a series of harassing environmental lawsuits began that have drowned the project in litigation. This series of events clearly shows that this project has already been subjected to extremely close scrutiny. All of the alternatives have been publicly debated and weighed, and the effects of the plan that has been adopted, including the environmental effects, have been carefully considered. Senators who have been led to believe that more time is needed for the study of alternatives and effects have been misled.

Two main points need to be emphasized. First, blocking this \$10 million in funding will not end Federal expenses. The Federal Government has already paid the Ute Indians nearly \$60 million in settlement costs. Once it violates its treaty agreement, it will certainly end up being sued again. Millions will be spent by the Interior Department defending against that suit, and millions will be spent by the Bureau of Indian Affairs in prosecuting it. Further payments will probably be needed, and in the end water will have to be brought to the Indians in accordance with the treaty. Of course, that agreement will be subject to all of the environmental delays that have already been dismissed against the current project. Further, the State and local Governments which have both built large parts of the needed infrastructure for the project already, plus which have given aid to the Utes, will sue for recovery of their losses, and we expect they would win. Agreeing to the Feingold amendment would clearly be breaching the contract.

The second, more important, point to emphasize is that the United States has a moral obligation to continue with this project. The Ute Indians were promised by treaty that they would be given this water. According to the National Congress of American Indians, the United States signed 473 treaties with American Indians from 1492 to the 1900s. Indians, for their part, lived up to the terms of every one of those treaties. Their word was their bond; the dishonor that would have come from breaking a solemn promise was so unthinkable to them that no matter how many times the United States violated treaties with them, they themselves never considered doing the same. How many of these 473 treaties do our colleagues suppose the United States honored? The answer is zero. Some Senators want to keep that as a perfect record. The 1988 agreement was expressly intended to fulfill, finally, the United States' obligation to the Ute Indians. We could build the Animas La Plata Project in a few years, or put off a solution for another several decades. We could try to buy them off with huge cash payments; they could leave their sovereign lands. These decisions, though, are not for us to make unilaterally. Any other time the United States enters into a treaty, we hear our colleagues speak in hushed tones that are usually reserved for the Constitution. Only treaties with Indians are treated cavalierly, if not even contemptuously. We have an obligation to build this project. If the Ute Indians want to renegotiate, we may renegotiate, but we cannot unilaterally throw out the agreement and tell them we are starting all over. The Ute Indians do not want to start all over and they do not want to sell out. Groups like the Sierra Club have made them huge cash buyout offers, but they have refused. They want the water to which they are entitled.

In Colorado, which is the State that is principally affected and which has the most knowledge about this project, sentiment in its favor is nearly universal. All of the major papers have endorsed it, and every Member of the Congressional delegation save one, who is so out of touch she does not even live in the State, has argued in its favor. Additionally, even the Clinton Administration has asked for funding. Secretary Babbitt, who in nearly every other instance has declared a virtual war on anyone in the West who makes a living from the land, has grudgingly admitted that this project is meritorious and should be funded. Our House colleagues cut funding for this project--they made a mistake. We urge our colleagues not to make the same mistake. We urge them to table the Feingold amendment.

**Those opposing** the motion to table contended:

The Animas La Plata project is dead, if not now, next year or the year after or the year after. The House has voted to kill it already.

**JULY 30, 1996****VOTE NO. 251**

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This year we may prevail in conference, but eventually we will not and the project will be killed after tens or hundreds of millions of dollars will have been wasted. The Animas La Plata project is the last surviving relic of a bygone era of grandiose, expensive water development projects that our country can no longer afford. Making matters worse, it is an extremely ill-considered project. Most water projects that cost the American taxpayers at least return benefits for the local people that are greater than those costs. In this case, though, the benefits will not even come close to the costs, and, for some users of the water, their costs are going to end up higher than they would have been if they had used other sources of water. For the Ute Indians, we know we have an agreement (though this agreement was only recently made and was not the original purpose for starting this project), but we need to renegotiate that agreement. We are certain that an accommodation can be reached, perhaps by coming up with some sort of a scaled-back version of the project. Alternatives need to be examined. If an effort is made, an environmentally sensitive, sensible, cost-effective means will be found to protect the Ute Indians' property rights. We do not want this project to end up like the La Farge Dam in Wisconsin, which was begun and never completed due to environmental challenges. The economic devastation to the area around the dam was huge. The same may happen in this case if we allow funding to proceed. We know of environmental concerns that have been raised, such as what the effect might be of changing the San Juan River's water flow pattern by building the two reservoirs that this project demands. Such concerns could eventually derail this project if fiscal conservatives in the House do not first manage to kill it. Forging ahead with money now on a losing cause just does not make sense. We should support the Feingold amendment, and go back to the drawing board.